

1 ASCENSION LAW GROUP  
2 PAMELA TSAO (266734)  
3 12341 Newport Ave., Suite B200  
North Tustin, CA 92705  
PH: 714.783.4220  
FAX: 888.505.1033  
4 Pamela.Tsao@ascensionlawgroup.com

5 Attorneys for Plaintiff JOHN HO

6

7

8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10

11 JOHN HO, an individual

12 Plaintiff,

13 vs.

14 PACIBEL, LLC, a limited liability  
company

15 Defendants.

16 Case No.: 2:23-cv-04709

17 **COMPLAINT FOR**

18 **(1) VIOLATION OF THE UNRUH  
CIVIL RIGHTS ACT  
(CALIFORNIA CIVIL CODE  
§§ 51, 52);**

19 **(2) VIOLATIONS OF THE  
AMERICANS WITH  
DISABILITIES ACT OF 1990**

## I. SUMMARY

1. This is a civil rights action by plaintiff John Ho (“Plaintiff”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding shopping center bearing the legal address of 6021 Pacific Blvd, Huntington Park, CA 90255-2953, Los Angeles County, and encompassing the entire exterior parking lot identified as APN 6320-014-046 where the business the “Yogurtland” operates (the “Property”). Plaintiff frequents the area for dining, shopping and entertainment as the area is near his residence. In this particular instance, Plaintiff desired to patronize the “Yogurtland” located on the property.

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney's fees and costs pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, et seq.) and related California statutes<sup>1</sup> against the owner of the property PACIBEL, LLC, a limited liability company ("Defendant").

II.

## JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1333 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C § 1337.

5. Plaintiff's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III.

## VENUE

6. All actions complained of herein take place within the jurisdiction of the

---

<sup>1</sup> Plaintiff is not currently asserting a cause of action under California Civil Code § 55, but may amend his complaint at a later time upon discovery of facts which give rise to such a claim.

1 United States District Court, Central District of California, and venue is invoked  
2 pursuant to 28 U.S.C. § 1391(b), (c)

3                          **IV.**

4                          **PARTIES**

5      7. On information and belief, Plaintiff alleges that Defendant is or was at  
6 the time of the incident, the owner, operator, lessor and/or lessee of the Property, and  
7 consist of a person (or persons), firm, company, and/or corporation.

8      8. Plaintiff is a T-12 paraplegic, and as a result is unable to walk or stand,  
9 and thus requires a use of a wheelchair at all times when traveling in public. Plaintiff  
10 is “physically disabled” as defined by all applicable California and United States laws,  
11 and a member of the public whose rights are protected by these laws. Plaintiff is a  
12 resident of Los Angeles County, California. Plaintiff is considered a high frequency  
13 litigant as that term is defined in California Code of Civil Procedure § 425.55(b). In  
14 the twelve months preceding the filing of this complaint, Plaintiff filed fifteen (15)  
15 other construction accessibility related claims (not including this one).

16                          **V.**

17                          **FACTS**

18      9. On February 27, 2022, Plaintiff patronized the Property. The Property is  
19 a sales or retail establishment, open to the public, which is intended for nonresidential  
20 use and whose operation affects commerce.

21      10. Plaintiff visited the Property and encountered barriers (both physical and  
22 intangible) that interfered with – if not outright denied – Plaintiff’s ability to use and  
23 enjoy the goods, services, privileges and accommodations offered at the facility. To  
24 the extent known by Plaintiff, the barriers at the Property included, but are not limited  
25 to the following:

- 27                          a. Parking spaces designated as accessible and accompanying access aisles  
28                          have slopes and/or cross slopes that exceed 2.0%. Without a level

1 parking space, it is difficult for Plaintiff to unload/transfer from a vehicle  
2 as his wheelchair rolls.

- 3 b. To access the sidewalks and stores, Plaintiff must traverse up a built-up  
4 curb ramp that is too steep. To the extent that the curb ramp is intended  
5 to be a ramp, it does not have the necessary railings for Plaintiff to safely  
6 maneuver up and down.  
7 c. Accessible parking spaces are not properly marked and maintained. For  
8 example, pavement marking is severely faded making it difficult for  
9 Plaintiff to determine which spaces will accommodate Plaintiff's  
10 disability. Additionally, there is loose gravel and broken pavement  
11 within accessible parking spaces and access aisles. These conditions  
12 make it difficult for Plaintiff as small loose pieces of gravel can get  
13 caught in Plaintiff's wheelchair causing him to lose balance and tip over.

14       **11.** These barriers to access are listed without prejudice to Plaintiff citing  
15 additional barriers to access after inspection by Plaintiff's access consultant, per the  
16 9<sup>th</sup> Circuits standing standards under *Doran v. 7-Eleven, Inc.* 524 F.3d 1034 (9<sup>th</sup> Cir.  
17 2008). These barriers prevented Plaintiff from enjoying full and equal access to the  
18 Property.

19       **12.** Plaintiff thus experienced difficulty and discomfort as a result of the  
20 accessible barriers he encountered. Although he would like to return to the Property  
21 to patronize the convenience store at the Property, he continues to be deterred from  
22 visiting the Property because of the future threats of injury created by these barriers.  
23 Plaintiff often frequents the area as he enjoys the shops and dining offered in the area.  
24 Within 6 months of the correction of any barriers, Plaintiff would return to the  
25 Property to not only patronize the stores on the Property, but to also ensure that  
26 barriers have been properly removed and/or corrected.

27       **13.** On information and belief, Plaintiff alleges that Defendant knew that  
28

1 these elements and areas of the Property were inaccessible, violate state and federal  
2 law, and interfere with (or deny) access to the physically disabled. Moreover,  
3 Defendant has the financial resources to remove these barriers from the Property  
4 (without much difficult or expense), and make the Property accessible to the  
5 physically disabled. To date, however, the Defendant refuses to remove those  
6 barriers.

7       14. On information and belief, Plaintiff alleges that at all relevant times,  
8 Defendant has possessed and enjoyed sufficient control and authority to modify the  
9 Property to remove impediments to wheelchair access and to comply with the  
10 Americans with Disabilities Act Accessibility Guidelines and Title 24 regulations.  
11 Defendant has not removed such impediments and have not modified the Property to  
12 conform to accessibility standards.

13       **VI. FIRST CAUSE OF ACTION: VIOLATION OF CALIFORNIA LAW**  
14       **INCLUDING: THE UNRUH ACT, CIVIL CODE §§ 51, 52 AND THE**  
15       **AMERICANS WITH DISABILITIES ACT AS INCORPORATED BY CIVIL**  
16       **CODE SECTION 51(f)**

17       15. Plaintiff incorporates the allegations contained in paragraphs 1 through  
18 14 for this claim and incorporates them herein.

19       16. At all times relevant to this complaint, California Civil Code § 51 has  
20 provided that physically disabled persons are free and equal citizens of the state,  
21 regardless of disability or medical condition:

22           All persons within the jurisdiction of this state are free and equal, and  
23 no matter what their sex, race, color, religion, ancestry, national  
24 origin, disability, or medical condition are entitled to the full and  
25 equal accommodations, advantages, facilities, privileges, or services  
26 in all business establishments of every kind whatsoever. Cal. Civ.  
27 Code § 51(b).

1       17. California Civil Code § 52 provides that the discrimination against  
2 Plaintiff on the basis of his disabilities constitutes a violation of the anti-  
3 discrimination provisions of §§ 51 and 52.

4       18. Defendant's discrimination constitutes a separate and distinct violation of  
5 California Civil Code § 52 which provides that:

6           Whoever denies, aids or incites a denial, or makes any discrimination  
7 or distinction contrary to section 51, 51.5 or 51.6 is liable for each and  
8 every offense for the actual damages, and any amount that may be  
9 determined by a jury, or a court sitting without a jury, up to a  
10 maximum of three times the amount of actual damage but in no case  
11 less than four thousand dollars (\$4,000) and any attorney's fees that  
12 may be determined by the court in addition thereto, suffered by any  
13 person denied the rights provided in Section 51, 51.5 or 51.6.

14       19. Plaintiff continues to be deterred from visiting the Subject Property based  
15 upon the existence of the accessible barriers. In addition to the instance of  
16 discrimination occurring in February 2022, Plaintiff is entitled to \$4,000.00 in  
17 statutory damages for each additional occurrence of discrimination under California  
18 Civil Code § 52.

19       20. Any violation of the Americans with Disabilities Act of 1990 (as pled in  
20 the Third Cause of Action) constitutes a violation of California Civil Code § 51(f)  
21 thus independently justifying an award of damages and injunctive relief pursuant to  
22 California law. Per § 51(f), “[a] violation of the right of any individual under the  
23 Americans with Disabilities Act of 1990 ... shall also constitute a violation of this  
24 section.”

25       21. The actions and omissions of Defendant as herein alleged constitute a  
26 denial of access to and use of the described public facilities by physically disabled  
27 persons within the meaning of California Civil Code §§ 51 and 52. As a proximate  
28

1 result of Defendant's action and omissions Defendant has discriminated against  
2 Plaintiff in a violation of Civil Code §§ 51 and 51.  
3

4 **VII.**  
5

6 **SECOND CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH**  
7 **DISABILITIES ACT OF 1990 (42 USC §§ 12101 *et seq.*)**

8 22. Plaintiff incorporates the allegations contained in paragraphs 1 through  
9 21 for this claim and incorporates them herein.  
10

11 23. As part of the Americans with Disabilities Act of 1990 ("ADA"),  
12 Congress passed "Title III – Public Accommodations and Services Operated by  
13 Private Entities." 42 U.S.C. § 12181 et seq. The Property is one of the "private  
14 entities" which are considered "public accommodations" for purposes of this title,  
15 which includes any "restaurant, bar, or other sales or rental establishment serving food  
16 or drink." § 301(7)(B).

17 24. The ADA states that "[n]o individual shall be discriminated against on  
18 the basis of disability in the full and equal enjoyment of the goods, services, facilities,  
19 privileges, advantages, or accommodations of any place of public accommodation by  
20 any person who owns, leases, or leases to, or operates a place of public  
21 accommodation." 42 U.S.C. § 12182.

22 25. The acts and omissions of Defendant set forth herein were in violation of  
23 Plaintiff's rights under the ADA and the regulations promulgated thereunder, 28 CFR  
24 Part 36 *et seq.*  
25

26 26. On information and belief, Plaintiff alleges that the Property was  
27 constructed or altered after January 26, 1993 thus triggering requirements for removal  
28 of barriers to access for disabled persons under § 303 of the ADA. Further on  
information and belief, Plaintiff alleges that removal of each of the barriers  
complained of by Plaintiff as hereinabove alleged, were at all times herein mentioned  
"readily achievable" under the standards §§ 301 and 302 of the ADA. As noted

1 hereinabove, removal of each and every one of the architectural barriers complained  
 2 of herein were also required under California law. In the event that removal of any  
 3 barrier is found to be "not readily achievable," Defendant still violated the ADA, per§  
 4 302(b )(2)(A)(v) by failing to provide all goods, services, privileges, advantages and  
 5 accommodations through alternative methods that were readily achievable.

6       27. On information and belief, as of the date of Plaintiff's encounter at the  
 7 Property and as of the filing of this Complaint, the Defendant denies and continues to  
 8 deny full and equal access to Plaintiff and to other disabled persons, including  
 9 wheelchair users, in other respects, which violate plaintiff's rights to full and equal  
 10 access and which discriminate against Plaintiff on the basis of his disability, thus  
 11 wrongfully denying to plaintiff the full and equal enjoyment of the goods, services,  
 12 facilities, privileges, advantages and accommodations, in violation of§§ 302 and 303  
 13 of the ADA. 42 USC §§ 12182 and 12183.

14       28. On information and belief, Defendant has continued to violate the law  
 15 and deny the rights of Plaintiff and other disabled persons to access this public  
 16 accommodation since on or before Plaintiff's encounters, as previously noted.  
 17 Pursuant to the ADA, § 308, 42 USC 12188 *et seq.*, Plaintiff is entitled to the  
 18 remedies and procedures set forth in§ 204(a) of the Civil Rights Act of 1964, 42 USC  
 19 2000(a)-3(a), as Plaintiff is being subjected to discrimination on the basis of disability  
 20 in violation of the ADA or has reasonable grounds for believing that he is about to be  
 21 subjected to discrimination. Pursuant to § 308(a)(2), "In cases of violations of§ 302(b  
 22 )(2)(A)(iv) and § 303(a) ... injunctive relief shall include an order to alter facilities to  
 23 make such facilities readily accessible to and usable by individuals with disabilities to  
 24 the extent required by this title."

25       29. Plaintiff seeks relief pursuant to remedies set forth in§ 204(a) of the Civil  
 26 Rights Act of 1964, 42 USC 2000(a)-3(a), and pursuant to Federal Regulations  
 27 adopted to implement the Americans with Disabilities Act of 1990. Plaintiff is a  
 28

1 qualified disabled person for purposes of § 308(a) of the ADA who is being subjected  
2 to discrimination on the basis of disability in violation of Title III and who has  
3 reasonable grounds for believing he will be subjected to such discrimination each time  
4 that he may attempt to use the property and premises.

5 **PRAYER**

6 WHEREFORE, Plaintiff prays that this court award damages and provide relief  
7 as follows:

8 1. Issue a preliminary and permanent injunction directing Defendant as current  
9 owner, operator, lessor, and/or lessee of the property and premises to modify the  
10 above described property and premises and related facilities so that each provides full  
11 and equal access to all persons, including but not limited to persons with physical  
12 disabilities who use wheelchairs, and issue a preliminary and permanent injunction  
13 directing Defendant to provide and maintain facilities usable by plaintiff and similarly  
14 situated persons with disabilities, and which provide full and equal access, as required  
15 by law, including appropriate changes in policy;

16 2. Retain jurisdiction over the Defendant until such time as the Court is satisfied  
17 that Defendant unlawful policies, practices, acts and omissions, and maintenance of  
18 inaccessible public facilities as complained of herein no longer occur, and cannot  
19 recur;

20 3. Award to Plaintiff all appropriate damages, including but not limited to  
21 statutory damages, general damages and treble damages in amounts within the  
22 jurisdiction of this Court, all according to proof;

23 4. Award to Plaintiff all reasonable statutory attorney fees, litigation expenses, and  
24 costs of this proceeding as provided by law;

25 5. Award to Plaintiff prejudgment interest pursuant to California Civil 17 Code§  
26 329;

27 ///

6. Grant such other and further relief as this Court may deem just and proper.

ASCENSION LAW GROUP, PC

DATE: June 15, 2023

/s/Pamela Tsao

Pamela Tsao, attorney for Plaintiff

JOHN HO